## 1NC

### FW

#### I negate the resolved.

**I value state sovereignty**, which is defined as “**The** supreme, absolute, and uncontrollable **power by which an independent state is governed** and **from which all specific** **political powers are derived**; the intentional **independence of a state, combined with the right and power of regulating its internal affairs without foreign interference**.”

#### State sovereignty is the essential value from which all other legitimate functions of the government derive. The government derives constitutive obligations to the people from their state of sovereignty.

Kennan explains, [George F Kennen (George F. Kennan, in full George Frost Kennan (born February 16, 1904, Milwaukee, Wisconsin, U.S.—died March 17, 2005, Princeton, New Jersey), American diplomat and historian best known for his successful advocacy of a “containment policy” to oppose Soviet expansionism following World War II.), “Morality and Foreign Policy,” Foreign Affairs 205-206, http://faculty.arts.ubc.ca/price/373/kennan.pdf]

“Second, let us recognize that the functions, **commitments and moral obligations of governments are not the same as those of the individual. Government is an agent, not a principal. Its** primary **obligation is to the *interests* of the national society it represents, not to the moral impulses that individual elements of that society may experience**. No more than the attorney vis­ a-vis the client, nor the doctor vis-a-vis the patient, can govern­ment attempt to insert itself into the consciences of those whose interests it represents. Let me explain. **The interests of** the national society for **which government has to concern itself [is]** are basically those of its military **security**, the integrity of its political life and **the well-being of its people . These needs have no moral quality. They arise from the** very **existence of the** national **state** in question **and from** the status of national sovereignty **it enjoys. They are the** unavoidable **necessities of a national existence and therefore not subject to classification as either "good" or "bad.”** SK

#### Impact – State Sovereignty is a precondition to debating about whether a state is just or not because only when a state has the ability to choose and implement a policy does it have agency. Given that government agency is a necessary condition to judge its justice, state sovereignty is the penultimate value for the round and precludes all other frameworks.

#### Absolutism is bad in justice because it doesn’t allow for changing conceptions of the “good,” and stifles disagreement about the good which leads to synthesis of information. **Especially in the context of national security debates, absolutism is a bad stance, as it doesn’t allow us to consider worst case scenarios which can actually affect wellbeing.**

Margulies 06, [Margulies, Peter (As an expert in National Security Law, Professor Peter Margulies focuses on the delicate balance between liberty, equality, and security in issues involving law and terrorism. Professor Margulies has written almost a dozen articles discussing the War on Terror. He currently works with RWU Law Professor Jared Goldstein, along with litigators from the law firm Edwards Angell Palmer & Dodge, in representing two Afghan detainees. Professor Margulies led a national conference entitled “Legal Dilemmas in A Dangerous World: Law, Terrorism and National Security” held at RWU. Professor Margulies also has an extensive background in immigration law and has represented Haitian refugees and conducted outreach to community legal service providers. Peter Marguiles teaches Immigration Law, National Security Law and Professional Responsibility. He has filed amicus briefs in high-visibility cases with the U.S. Supreme Court and has been frequently cited in the New York Times, the National Law Journal and other media outlets. ). "Beyond Absolutism: Legal Institutions in the War on Terror." U. Miami L. Rev. 60 (2005): 309. SK]

**Absolutism is a tempting stance** for the left and right wing **in surveying the post-September 11th legal landscape.** Ideologies that allow for no exceptions attract true believers.1 But, as three recent books on the role of law and lawyers in times of crisis demonstrate, **an absolutist stance produces little useful guidance**. **Even when normative prescriptions echo the absolutist line, such norms emerge most effectively from an institutional viewpoint that considers how legal actors preserve fairness, deliberation**, and what Justice Jackson in the Steel Seizure case called a "workable government."2 The three books considered here seek to **move beyond absolutism on three compelling issues in national security**. Torture: A Collection,3 \* Professor of Law, Roger Williams University. 1. See CASS R. SUNSTEIN, WHY SocIETms NEED DISSENT 121-23 (2003) (discussing why extremist views, which typically do not allow exceptions, can mobilize support). 2. See Youngstown Sheet & Tube Co. v. Sawyer (Steel Seizure), 343 U.S. 579, 635 (1952) (Jackson, J., concurring). 3. TORTURE: A COLLECTION (Sanford Levinson ed., 2004). UNIVERSITY OF MIAMI LAW REVIEW a provocative anthology edited by Sanford Levinson, features a range of progressive commentators challenging an absolutist view of torture, which would bar recourse to the practice under any circumstances, and even prohibit talking about it.4 These commentators also reject the position taken in legal memos by Bush Administration lawyers (since disavowed),5 recognizing few, if any, constraints on presidential power to order interrogation techniques that arguably constitute torture.6 A new volume edited by Mark Tushnet, The Constitution in Wartime,7 seeks alternatives to a similar contest of absolutists in the left and right wing who take opposing positions on issues involving executive power to detain individuals after September 1 lth-either absolutely prohibiting the exercise of presidential power without express congressional authorization or allowing the Executive unfettered discretion.8 Similarly, Jean Stefancic's and Richard Delgado's How Lawyers Lose Their Way,9 focuses on the professional example provided by lawyer and poet Archibald MacLeish, who worked to secure the release of the literary genius and World War II Fascist collaborator Ezra Pound during the Cold War. The book offers crucial lessons on a third issue where absolutism appeals to the right wing: the punishment of those, such as the so-called "American Taliban," John Walker Lindh, convicted of offenses involving aid to terrorist groups. Here, the right wing's absolutism can lead to harsh results, while the absolutism of the left wing has produced a general silence on the issue, as the left's focus 4. Ariel Dorfman, The Tyranny of Terror: Is Torture Inevitable in Our Century and Beyond?, in TORTURE: A COLLECTION, supra note 3, at 3, 17 ("I can only hope and plead and pray that a day will come when the very question of torture will have been forever abolished from our midst."); Sanford Levinson, Contemplating Torture, in TORTuRE: A COLLECTION, supra note 3, at 23, 30 (asserting that "some critics have condemned any . . . discussions" addressing "what methods of interrogation, by stopping 'short' of banned practices, are therefore defined as acceptable"). 5. See R. Jeffrey Smith & Dan Eggen, Justice Expands "Torture" Definition, WASH. POST, Dec. 31, 2004, at Al (quoting new Department of Justice opinion that superseded "torture" memo). 6. Compare Memorandum for Alberto R. Gonzales, Counsel to the President, Re: Standards of Conduct for Interrogation under 18 U.S.C. §§ 2340-2340A (Aug. 1, 2002), in MARK DANNER, TORTURE AND TRUTH: AMERICA, Anu GHRAIB, AND THE WAR ON TERROR 115, 145 (2004) [hereinafter Memo for Alberto Gonzales] (arguing that federal statute criminalizing practice of torture "must be construed as not applying to interrogations undertaken pursuant to [the President's] Commander-in-Chief authority"), with Levinson, supra note 4, at 28-30 (expressing skepticism about memo's assertions). 7. THE CONSTITUTION IN WARTIME: BEYOND ALARMISM AND COMPLACENCY (Mark Tushnet, ed., 2005). 8. Mark Tushnet, Introduction to THE CONSTITUTION IN WARTIME: BEYOND ALARMISM AND COMPLACENCY, supra note 7, at 1 (distinguishing between "alarmists" who oppose presidential power and "shills" who act as apologists for the current Administration). 9. JEAN STEFANCIC & RICHARD DELGADO, How LAWYERS LOSE THEIR WAY (2005). [Vol. 60:309 BEYOND ABSOLUTISM on broad legal principles in the torture and detention realms obscures the human costs of harsh sentencing in individual cases such as Lindh's. Instead of the sloganeering of absolutism, the legal system needs a careful look at how institutions and rules function under uncertainty. Taken together, these books suggest that **ex ante (before the fact) rules dealing with issues such as torture, war powers regarding detention, and punishment for terrorism and national security crimes are inadequate**. **Absolute ex ante rules of prohibition fail to capture the subtleties of context, including the elusive but impossible to ignore "ticking bomb" scenario in the torture debate.'** ° By the same token, express ex ante authorizations, of the kind that Alan Dershowitz suggests in his proposal for "torture warrants,"" threaten to make torture routine. Giving a greater role to ex post (after the fact) decision makers, such as courts and juries, provides the flexibility that the law needs to adjust to changing circumstances. However, as the volumes reviewed here suggest, ex post measures pose difficult, and even tragic choices, such as the issue of whether a necessity defense should be available for persons accused of practicing torture or other coercive conduct that "comes right up to the line,"' 2 when the information thus acquired has averted catastrophe. Part I of this essay considers the dilemmas surrounding torture, and how they reveal the poverty of absolutist visions of executive power or outright prohibition. Part II applies a similar analysis to the question of executive power in wartime. Part III examines the interaction of time and emergency, making a case for modifying the sentences of individuals whose illegal acts do not include specific crimes of violence, and who are caught up in the shift of paradigms between normality and crisis.SK

Thus, the value criterion is **contextual non-absolute decision-making to preserve sovereignty.**

### Thesis

#### The thesis of the negative case is that absolutely saying civil liberties should be prioritized over national security is nonsensical. They should be balanced, and in some cases, national security comes before civil liberties.

Prieto 09, [Daniel B.(Daniel B. Prieto is adjunct senior fellow for counterterrorism and national security at the Council on Foreign Relations. Prieto is coauthor of several books and monographs, including Global Movement Management: Strengthening Commerce, Security and Resiliency in Today’s Networked World and Neglected Defense: Mobilizing the Private Sector to Support Homeland Security. He has served on the professional staff of the Homeland Security Committee in the U.S. House of Representatives. Prieto received a BA from Wesleyan University and an MA from the Johns Hopkins University School of Advanced International Studies (SAIS). ), Civil Liberties and National Security: Critical Issues Still Unresolved, Argues New CFR Study, Council on Foreign Relations, 2-5-2009, 9, https://www.cfr.org/news-releases/civil-liberties-and-national-security-critical-issues-still-unresolved-argues-new-cfr, 6-17-2017. SK]

Written by Daniel B. Prieto, an adjunct senior fellow for counterterrorism and national security at the Council on Foreign Relations, the paper examines the deep partisan and ideological disagreements surrounding U.S. counterterrorism policy and civil liberties and charts a course forward, arguing that “it is critical that the United States achieve a new bipartisan national consensus on how to confront and defeat the threat posed by al-Qaeda and associated groups, yet stay true to U.S. values.” The paper, War About Terror: Civil Liberties and National Security After 9/11, finds that “**counterterrorism policies are sustainable over the long term only if policymakers design them with the coequal objectives of improving national security and protecting civil liberties.** **Any policy or program that** consistently prioritizes **one objective over the other will not be durable over the long term, and will eventually fail the country on both counts**.” Prieto applauds the new direction signaled by Obama, noting that “counterterrorism policies and programs that deviate from a commitment to protecting individual liberties harm U.S. foreign policy and national security.” The paper finds that international skepticism of the United States’ moral credibility and commitment to the rule of law has hampered cooperation on counterterrorism initiatives with other nations and aided terrorist radicalization and recruitment. SK

### Contention 1 is Domestic Terrorism

#### In the current era, we may have to violate the civil liberties of domestic terrorists who pose threats to our countries and to nations abroad – this outweighs any civil liberty violation as it concerns threats that can strike at any time.

GETLER Warren Getler, is an investigative journalist based in Washington, D.C. Previously he has been a New York-based financial reporter for The Wall Street Journal and a London and Frankfurt correspondent of the International Herald Tribune.Washington Post, 5-25-2003, ["Civil War Rules for the Terror War", https://www.washingtonpost.com/archive/opinions/2003/05/25/civil-war-rules-for-the-terror-war/40d4b2d4-e0b6-4dab-b8c1-3485a975baa0/] bcr 6-18-2017

Bush reminds us that we are "at war" in the fight against global terrorism. But how the country prosecutes that war is vital to maintaining the fabric of our open society. A crackdown that is highly targeted is justified. In all likelihood, foreign agents -- some of whom may be U.S. citizens or are in line for achieving that status -- are continuing to work in this country to abet Islamic extremists. But they need to be found and identified through careful, selective intelligence, not racial profiling. These issues will likely be taken up eventually by the Supreme Court, particularly those concerning lengthy detentions without charge of noncitizens, government secrecy in such cases and the use of military tribunals when civil courts are available in peacetime. Rehnquist, in his address at Indiana, noted that "The Civil War era produced the first important civil liberties decision from the Supreme Court -- the case of Ex parte Milligan. The ramifications of the Milligan case are with us to this day." Milligan, which upheld a noncombatant civilian's right to jury trial versus military tribunal, stemmed from charges of treason and conspiracy against the KGC and other activists.

#### Impact outweighs in terms of state sovereignty, as if the government cannot protect itself from terrorists from inside its borders, it cannot uphold wellbeing of society.

### Contention 2 is Digital Crimes

#### Controversial NSA surveillance technology is key to fight major crimes which threaten the security of the nation. We are justified in violating civil liberties for national security in these instances.

Sara Degli-Esposti et al, Professor at the Open University of Catolinia, Spain, March 2017, ["Aligning security and privacy The case of Deep Packet Inspection", https://www.researchgate.net/profile/Vincenzo\_Pavone3/publication/315657622\_Aligning\_security\_and\_privacy\_-\_The\_case\_of\_Deep\_Packet\_Inspection/links/58d8eaceaca2727e5e07d826/Aligning-security-and-privacy-The-case-of-Deep-Packet-Inspection.pdf, 6-18-2017] JMS

Given the importance of digital communications, interactions and relations, this article focuses on lay people’s opinions of a specific surveillance technology, which is Deep Packet Inspection (DPI). DPI is a type of data processing that looks in detail at the contents of the data being sent. On the Internet, any information sent or received is collected into packets, which have a label on them called a header that describes what these packets are, who sent them, and where they are going: just like a letter flowing through a postal network. DPI is a method of packet filtering which allows examining the content of a packet rather than simply read its header by deeply analysing packet contents, including information from all seven layers of the Open Systems Interconnection (OSI) model. As DPI makes it possible to find, identify, classify, reroute or block packets with specific data or code payloads, it has been compared to a postman opening one’s letters and reading their contents (SurPRISE, 2014). As many ICT technologies, DPI has several applications. Internet service providers (ISP) can use DPI to allocate available resources to streamline traffic flow, or to apply different charging policies, traffic shaping, or offer quality of service guarantees to selected users or applications (Antonello et al., 2012). DPI has been used by major network operators in the U.S. and Canada to block or restrict the speed of peer-to-peer file sharing traffic by their customers (Mueller and Asghari, 2012). In enterprises, it is used to ensure network security, and to support quality of service and terms of use, copyright enforcement, target marketing and behavioural advertising to online customers (Corwin, 2011). DPI represents a basic component of network security as it combines techniques such as protocol anomaly detection and signature scanning, traditionally available in anti-virus solutions (Anderson, 2007). DPI is also used in the fight against major crimes such as child pornography, transnational organized crime and terrorism (Person, 2010). However, DPI has been also used by Libyan and Syrian Governments to spy and capture rebels, and it is used by the Chinese Government as a censorship tool (Fuchs, 2013). The Snowden’s revelations also demonstrated that DPI has been used by the NSA to spy on both citizens and public authorities of several countries around the world (Lyon, 2014). It is important to consider that, by the time the citizen summits took place, DPI had begun to receive remarkable media attention, due to the NSA scandal and Snowden’s revelations. For this reason, most users were aware of the existence of this technology.

#### National security in this instance trades off with civil liberties because the info can be used by government potentially to violate civil liberties.

Giacomello, [Giacomello, Giampiero, ed. Security in cyberspace: Targeting nations, infrastructures, individuals. Bloomsbury Publishing USA, 2014. SK]

MacAskill. 2013) heightened public attention on the dilemma between security and surveillance. Leaked NSA information showed that the NSA and the FBI were **accessing stored. comprehensive Internet communications on servers** of nine leading US Internet companies. While there seems to be no link between the NSA surveillance scandal and the programs considered in this chapter, **it is likely that the new public awareness regarding the extent of the surveillance and the technical capabilities may shape the public perception on DPI--enabled cybersecurity and potential risks to civil liberties.** SK

#### Outweighs in terms of state sovereignty as national security is necessary to prevent violations of codified laws that protect wellbeing of people in general.

## 2NR

### OV - Extensions

#### FW Extension

#### Extend the framework. The reasons why absolutist frameworks of morality don’t work in decision making is because they completely ignore context as a factor in decision making. No one thinks that a risk scenario where a dollar is at risk should be treated the same as when lives are at risk. We need non absolutist moral frameworks.

#### Thesis Extension

#### Extend the Neg thesis. The affirmative is an absolute moral statement of prioritization which will never work as it isn’t contextual to real life situations. The negative offers instances where national security should be prioritized over civil liberties to disprove the thesis of the affirmative.

#### Contention 1 Extension

#### Extend the 1st contention. The violence of today is waged not by foreign armies but by individual terrorists. This new stealthier threat can only be met by the full strength of our defensive forces in the Neg world. Also – domestic terrorism is a national security threat, and domestic terrorists can be citizens, so the government, in order to curb this threat, has to violate the civil liberties of the potential domestic terrorist for the sake of national security.

#### Contention 2 Extension

#### Extend the 2nd contention. In the world that we live in, the internet is expansive and far reaching. Surveillance technology such as Deep Packet Inspection is necessary to stop awful crimes such as child pornography, crime, and terrorism. As Degli-Espoti and Giacomello explain, there is a potential tradeoff with civil liberties as the government can use this information to violate our civil liberties, but in the end, stopping the crimes is more necessary for society.

We have ends based – they say civil liberties for the end of nat security – our framework si ends based so that means the highest value is the end which is national security.

### 2NR OV – Big Questions

The big question of this debate is: are there instances when civil liberties and national security conflict where we can justifiably prioritize national security as temporarily excluding certain concerns of civil liberties? The answer is yes, which means you vote negative for 5 reasons:

**First, the Framework and the thesis of the negative case –**

### 2NR OV – Barclay

Therefore, it is eminently apparent that, [I]f a democratic state sacrifices the liberty of its citizenry in order to maintain or improve its national security, then the state’s [its] actions are not merely just and ethical vis-à-vis its citizenry, but, rather, the state’s actions fulfill the state’s fundamental, protective, function and are, in fact, an inevitable aspect of the state’s [its] existence. More importantly, it is clear that, although liberalism and its foundational principles have been stubbornly misrepresented and misused by modern liberals, in order to viciously attack all states and leaders that do not consider personal liberty to be sacrosanct, modern liberals are foolish and emphatically incorrect to argue that the fundamental function of every democratic state is the preservation of its citizens’ liberty, as well as to criticize states and leaders that sacrifice the liberty of their citizenry in order to preserve national security.

Barclay, William L. [M.A., Political Science, University of Ottawa] “Liberty, Security, and the Degenerative Cycle of Democracy.” *Journal of Liberty and International Affairs*, Vol. 2, No. 1, 2016. CH

Because I agree with **Political Scientist William Barclay** that states need proactive policies to protect rights, I negate.

### 2NR Consequentialism Hijack

#### Extend my value of contextual solutions to social problems – this asks you to evaluate this debate as a question of which side maximizes positive consequences in the specific context of liberty vs. security trade-offs.

#### Assuming I win this is the best framework for the round, then you automatically negate based of the premise of the 1AC – which is preserving civil liberties as a means to achieve national security. Essentially, the aff treats national security as the ultimate end, which means they’re prioritizing it first under a value system of consequentialism.

### 2NR Worst Case Scenarios

#### We need a moral theory that can account for “worst case scenarios” especially in the context of the national security debate. Any theory of “agency” or “rights” can account for day to day life, but our moral values are only *tested* when we get to worst case scenarios. Look to the beginning of the negative case, where I tell you that we have to look to situations where morality is tested, as that moral dilemma advances society. Then, look to Margulies, who says that only contextual moral obligations can account for *worst case scenarios.* That would imply national security comes before civil liberties in some extreme instances, which means you vote negative.

### 2NR Agency

#### The affirmative only considers when the people have agency, but the negative framework takes into account the conditions that are necessary for a *state* to have agency. State agency comes first because only the state can *grant* the people agency. Only if states are sovereign – and do not have undue influence from external threats – can the state have agency without being under coercion. National security is necessary to maintain sovereignty in two ways: (a) if a state’s existence is threatened or the state cannot fulfill obligations, then it does not have the ability to govern itself as it doesn’t exist and (b) if the government doesn’t prioritize legitimate national security threats, it is constantly under the fear of attack which violates sovereignty as the government is precluded from taking actions to preserve itself.

### 2NR Means > Ends

#### Our framework also considers the means – this argument goes both ways. If the way a state prioritizes civil liberties is by violating national security, the state jeopardizes its sovereignty, which is a bad means as it impedes the ability for the government to make positive moral decisions in the future AND compromises the government’s agency.

## Case

### AT: Intrusiveness

#### In the long term, far from creating a slippery slope of rights abuses, negating makes states *less* intrusive rather than more.

Professor Amitai Etzioni shows: Etzioni, Amitai. [University Professor, George Washington University, Director of the Institute for Communitarian Policy Studies] A Communitarian Perspective on Privacy. Connecticut Law Review. 2000. DD

At the very heart of the privacy issue is the appropriateness of social formulations of the good, the point of contention that separates communitarians from both liberals and social conservatives. The distinction matters little for liberals, who strongly oppose social formulations of the good, believing that each person should be free to find and pursue his or her own conception of the good, and who thus seek to maximize both private choice and privacy. For social conservatives, especially religious fundamentalists who rely on the State to enforce their values-for instance, to suppress pornography-and who are willing to curtail both private choices and privacy, the difference between these two concepts is also of limited import. In contrast, the distinction is crucial for communitarians (at least for responsive ones) who hold that important social formulations of the good can be left to private choices-provided, of course, that there is sufficient communal scrutiny. That is, [T]he best way to curtail the need for governmental control and intrusion is to have somewhat less privacy. This point requires some elaboration. The key to understanding this notion lies in the importance of the "third realm",2s of which communitarians are particularly mindful. This realm is neither the state nor the market (or individual choices), but rather the community, which relies on the subtle social fostering of pro-social conduct by such means as communal recognition, approbation, and censure. These processes require the ability to scrutinize some behavior by friends, neighbors, and members of one's voluntary associations-not by police or official agents.26 My greatest differences with Schwartz's positions stem from his discussion of communitarian viewpoints. He argues that one tenet that all communitarians share is the notion that "the good society is a self governing one based on deliberative democracy.,,27 I beg to differ. As I showed in some detail in The New Golden Rule,28 the concept of deliberative democracy is based on procedural notions concerning discussions of fact and the application of reason!9 Schwartz refers to those as civic forums or exchanges. Communities, in contrast, draw mainly on substantive moral dialogues, in which the values of the members are engaged and persuasion occurs, leading to a new or recast shared definition of the good. Schwartz argues that, historically, communities have often oppressed their members rather than served to curb antisocial behavior .31 This is true, but no longer the case in free societies. These days, communities are often much too weak to oppress people, and people--who move on average once every five years--can choose communities they find compatible. Of course there are exceptions, but they do not make the rule. Schwartz quotes several law and economics scholars who say that communities' social norms are inefficient!2 First, the main task of social norms is to define what is morally right and wrong. Thus, as I see it, child abuse violates the norms of most communities, whether or not it is efficient. Second, if an "inefficient" social norm exacts higher costs than any other norm, it might be a burden but it does not follow at all that efficiency is the only thing that matters to people. People will light candles during various rituals and holidays even if it is safer and less costly to turn on a light. Muslims will fast all day long for thirty days during Ramadan although it slows down work and commerce, and Jews refuse water on Yom Kippur even when it is hot like hell. I find Schwartz's argument that communities lead people to falsify their preferences most puzzling. As evidence, he provides the disclosure about Clinton in the Kenneth Starr report.33 Whatever one thinks about it, Starr, Clinton, Congress, and the millions of Americans and foreigners who read the report do not make a community. On the contrary, people obviously find it much easier to falsify their preferences when faced with strangers (especially on the Internet) than with those they know, with members of the community. Furthermore, Schwartz's argument that cyberspace is self-governing, and hence meets the communitarian criteria, is twice mistaken. First, cyberspace is rapidly being normalized and subject to extensive government regulations, for instance in matters regarding intellectual property, child abuse, violations of privacy, (especially medical privacy) and much more. Second, Internet chat rooms often provide no interpersonal affective bonds, an essential basis of community, and little opportunity for moral dialogues. In short, while there can be virtual communities, most Internet forums are not. Returning to the question of how communities self-govern, one finds an answer by examining crime. Criminal acts are best prevented when a community abhors the behavior that is considered criminal by law makers; conversely, law enforcement works poorly when not supported by the community's moral and informal enforcement systems.34 For instance, abuse of controlled substances and alcohol is very rare in religious communities that object to such behavior, such as in Mormon, Hasidic Jewish, Amish, and black Moslem communities, and is relatively rare in much of the Bible Belt and segments of small-town America.3S The reason is not simply that internalized values lead individuals to avoid the behaviors in question; pro-social values also find much support in their communities, support that entails a measure of scrutiny by others. The extent to which many professionals, such as physicians and lawyers, conform to their ethical codes is also largely determined by the values their particular community upholds, and mainly governed by informal enforcement mechanisms requiring social scrutiny but reducing need for government control. The same holds true for honor codes among students in military academies and select colleges. In fact, [C]ontinual efforts by groups such as the ACLU to extend the sphere of privacy paradoxically force increases in government interventions. A sterling example is encryption. As the ACLU and other individualist groups blocked the introduction of public key recovery (which enables the government to decod[ing] [of] encrypted messages[,] if proper court authorization is accorded), the government was pushed to use more invasive procedures for the same kind of criminal investigations, for instance planting microphones in the homes of suspects. In short, if we hold the values involved and the level of adherence we seek constant, [P]ublicness reduces the need for public control, while excessive privacy often necessitates State-imposed limits on private choices.37 Admittedly, each community and society determines the scope and content of their particular formulations of the good, normative claims made, and the intensity with which they foster compliance. However, once these matters are agreed upon, higher levels of communal scrutiny facilitate compliance better than higher levels of public control, and often facilitate much lower levels of official oversight.38

By prioritizing long-term community needs over short-term individual wants, negating preserves systemic justice. Thus, I negate, and now move on to my opponent’s case.

### Social Contract

#### [Himma] Place an overview on the affirmative case: *all* Social Contract theories give states a greater duty to provide collective security than to protect civil liberties.

Professor Kenneth Himma proves: Himma, Kenneth E. [Associate Professor of Philosophy, Seattle Pacific University] “Privacy Versus Security: Why Privacy is Not an Absolute Value or Right.” *San Diego Law Review,* Vol. 44, 2007. CH

Accordingly, the state’s most important obligation is to protect property, on Locke’s view, precisely because the protection of property will ensure the public peace and minimize threats to physical security. Protection of property, though first among the state’s priorities, is a means to the ultimate end of protecting security by ending the war of all against all that occurs in the state of nature. For classical social contract theorists, then, the most important value that submission to [the] state authority is intended to pursue[s] is security. It follows, of course, that [W]hatever the rest of the hierarchy of values might look[s] like, the value of privacy is less[.], according to classical social contract theories, than the value of security. The rights to life and freedom from intentionally inflicted grievous physical injury trump the right to privacy, if such there be, when the latter comes into direct conflict with the former. Of course, Locke would rank the right of property alongside the other rights or interests mentioned above as constituting the right or interest in security because he believes protection of property is so important to protection of security. But classical [S]ocial contract theories *all* converge in implying (1) that the right or interest in privacy is not absolute; and (2) that the right or interest in security trumps the right or interest in privacy when the two come into direct conflict[.]— though neither theory tells us much about how or when these interests might directly conflict.

Thus, civil liberties come second to security.

### AT: Threats Not Real

#### [Ravenal] Place an overview on the affirmative case: s/he claims that national security threats are exaggerated, but states have a political *disincentive* to fabricate them.

Professor Earl Ravenal notes: Ravenal, Earl. [Professor Emeritus, Georgetown University School of Foreign Service] “What's Empire Got to Do with It? The Derivation of America's Foreign Policy.” Critical Review: An Interdisciplinary Journal of Politics and Society, Vol. 21, Issue 1, 2009. RP

The underlying notion of “the security bureaucracies . . . looking for new enemies” is a threadbare concept that has somehow taken hold across the political spectrum, from the radical left (viz. Michael Klare [1981], who refers to a “threat bank”), to the liberal center (viz. Robert H. Johnson [1997], who dismisses most alleged “threats” as “improbable dangers”), to libertarians (viz. Ted Galen Carpenter [1992], Vice President for Foreign and Defense Policy of the Cato Institute, who wrote a book entitled A Search for Enemies). What is [M]issing from most analysts’ claims of “threat inflation,” however, is a convincing theory of why, say, the American government significantly (not merely in excusable rhetoric) might magnify and even invent threats (and, more seriously, act on such inflated threat estimates). In a few places, Eland (2004, 185) suggests that such behavior might stem from military or national security bureaucrats’ attempts to enhance their personal status and organizational budgets, or even from the influence and dominance of “the military-industrial complex”; viz.: “Maintaining the empire and retaliating for the blowback from that empire keeps what President Eisenhower called the military-industrial complex fat and happy.” Or, in the same section:¶ In the nation’s capital, vested interests, such as the law enforcement bureaucracies . . . routinely take advantage of “crises”to satisfy parochial desires. Similarly, many corporations use crises to get pet projects— a.k.a. pork—funded by the government. And national security crises, because of people’s fears, are especially ripe opportunities to grab largesse. (Ibid., 182)¶ Thus, “bureaucratic-politics” theory, which once made several reputa- tions (such as those of Richard Neustadt, Morton Halperin, and Graham Allison) in defense-intellectual circles, and spawned an entire sub-industry within the field of international relations,5 is put into the service of dismissing putative security threats as imaginary. So, too, can a surprisingly cognate theory, “public choice,”6 which can be considered the right-wing analog of the “bureaucratic-politics” model, and is a preferred interpretation of governmental decision- making among libertarian observers. As Eland (2004, 203) summarizes:¶ Public-choice theory argues [that] the government itself can develop sepa- rate interests from its citizens. The government reflects the interests of powerful pressure groups and the interests of the bureaucracies and the bureaucrats in them. Although this problem occurs in both foreign and domestic policy, it may be more severe in foreign policy because citizens pay less attention to policies that affect them less directly.¶ There is, in this statement of public-choice theory, a certain ambiguity, and a certain degree of contradiction: Bureaucrats are supposedly, at the same time, subservient to societal interest groups and autonomous from society in general.¶ This journal has pioneered the argument that state autonomy is a likely consequence of the public’s ignorance of most areas of state activity (e.g., Somin 1998; DeCanio 2000a, 2000b, 2006, 2007; Ravenal 2000a). But state autonomy does not necessarily mean that bureaucrats substitute their own interests for those of what could be called the “national society” that they ostensibly serve. I have argued (Ravenal 2000a) that, precisely because of the public-ignorance and elite-expertise factors, and especially because the opportunities—at least for bureaucrats (a few notable post-government lobbyist cases nonwithstanding)—for lucrative self-dealing are stringently fewer in the defense and diplomatic areas of government than they are in some of the contract-dispensing and more under-the-radar-screen agencies of government, the “public-choice” imputation of self-dealing, rather than working toward the national interest (which, however may not be synonymous with the interests, perceived or expressed, of citizens!) is less likely to hold. In short, state autonomy is likely to mean, in the derivation of foreign policy, that “state elites” are using rational judgment, in insulation from self-promoting interest groups—about what strategies, forces, and weapons are required for national defense.¶ Ironically, “public choice”—not even a species of economics, but rather a kind of political interpretation—is not even about “public” choice, since, like the bureaucratic-politics model, it repudiates the very notion that bureaucrats make truly “public” choices; rather, they are held, axiomatically, to exhibit “rent-seeking” behavior, wherein they abuse their public positions in order to amass private gains, or at least to build personal empires within their ostensibly official niches. Such sub- rational models actually explain very little of what they purport to observe. Of course, there is some truth in them, regarding the “behavior” of some people, at some times, in some circumstances, under some conditions of incentive and motivation. But the factors that they posit operate mostly as constraints on the otherwise rational optimization of objectives that, if for no other reason than the playing out of official roles, transcends merely personal or parochial imperatives.¶ My treatment of “role” differs from that of the bureaucratic-politics theorists, whose model of the derivation of foreign policy depends heavily, and acknowledgedly, on a narrow and specific identification of the role- playing of organizationally situated individuals in a partly conflictual “pulling and hauling” process that “results in” some policy outcome. Even here, bureaucratic-politics theorists Graham Allison and Philip Zelikow (1999, 311) allow that “some players are not able to articulate [sic] the governmental politics game because their conception of their job does not legitimate such activity.” This is a crucial admission, and one that points— empirically—to the need for a broader and generic treatment of role.¶ Roles (all theorists state) give rise to “expectations” of performance. My point is that virtually every governmental role, and especially [N]ational-security roles, and particularly the roles of the uniformed military, embody expectations of devotion to the “national interest”; rationality in the derivation of policy at every functional level; and objectivity in the treatment of parameters, especially external parameters such as “threats[.]” and the power and capabilities of other nations. Sub-rational models (such as “public choice”) fail to take into account even a partial dedication to the “national” interest (or even the possibility that the national interest may be honestly misconceived in more parochial terms). In contrast, an official’s role connects the individual to the (state-level) process, and moderates the (perhaps otherwise) self-seeking impulses of the individual. Role-derived behavior tends to be formalized and codified; relatively transparent and at least peer-reviewed, so as to be consistent with expectations; surviving the particular individual and trans- mitted to successors and ancillaries; measured against a standard and thus corrigible; defined in terms of the performed function and therefore derived from the state function; and uncorrrupt, because personal cheating and even egregious aggrandizement are conspicuously discouraged.¶ My own direct observation suggests that defense decision-makers attempt to “frame” the structure of the problems that they try to solve on the basis of the most accurate intelligence. They make it their business to know where the threats come from. Thus, threats are not “socially constructed” (even though, of course, some values are). A major reason for the rationality, and the objectivity, of the process is that much [S]ecurity planning is done, not in vaguely undefined circumstances that offer scope for idiosyncratic, subjective behavior, but rather in structured and reviewed organizational frameworks. Non-rationalities (which are bad for understanding and prediction) tend to get filtered out. People are fired for presenting skewed analysis and for making bad predictions. This is because something important is riding on the causal analysis and the contingent prediction.

Thus, states are likelier to pursue *real* threats than false ones.

#### 2. First, the opposite is true; officials greatly underestimate threats, leading to detrimental breaches in national security.

**Posner 2:** Posner, Richard A. [Professor of Law, University of Chicago Law School] “Security Versus Civil Liberties.” The Atlantic. December 2001. EV

**It will be argued that the lesson of history is that officials habitually exaggerate dangers to the nation's security[,]**. **[b]ut the lesson of history is the opposite. It is [B]ecause officials have repeatedly and disastrously underestimated these dangers that our history is as violent as it is.** **Consider such underestimated dangers** as that of secession, which led to the Civil War; **of a Japanese attack on the United States, which led to the disaster at Pearl Harbor;** of Soviet espionage in the 1940s, which accelerated the Soviet Union's acquisition of nuclear weapons and emboldened Stalin to encourage North Korea's invasion of South Korea; **of the installation of Soviet missiles in Cuba, which precipitated the Cuban missile crisis; of political assassinations and outbreaks of urban violence in the 1960s[.]**; of the Tet Offensive of 1968; **of the Iranian revolution of 1979 and the subsequent taking of American diplomats as hostages; and, for that matter, of the events of September 11. It is true that when we are surprised and hurt, we tend to overreact—but only with the benefit of hindsight can a reaction be separated into its proper and excess layers.** In hindsight we know that interning Japanese-Americans did not shorten World War II. But was this known at the time? If not, shouldn't the Army have erred on the side of caution, as it did? **Even today we cannot say with any assurance that Abraham Lincoln was wrong to suspend habeas corpus during the Civil War, as he did on several occasions, even though the Constitution is clear that only Congress can suspend this right.** (Another of Lincoln's wartime measures, the Emancipation Proclamation, may also have been unconstitutional.) But Lincoln would have been wrong to cancel the 1864 presidential election, as some urged: by November of 1864 the North was close to victory, and canceling the election would have created a more dangerous precedent than the wartime suspension of habeas corpus. **This last example shows that civil liberties remain part of the balance even in the most dangerous of times, and even though their relative weight must then be less. Lincoln's unconstitutional acts during the Civil War show that even legality must sometimes be sacrificed for other values.** We are a nation under law, but first we are a nation. I want to emphasize something else, however: the malleability of law, its pragmatic rather than dogmatic character. The law is not absolute, and the slogan "*Fiat iustitia ruat caelum*" ("Let justice be done though the heavens fall") is dangerous nonsense. **The law is a human creation rather than a divine gift[.], a tool of government rather than a mandarin mystery. It is an instrument for promoting social welfare, and as the conditions essential to that welfare change, so must it change. Civil libertarians today are missing something else—the opportunity to challenge other public-safety concerns that impair civil liberties.** I have particularly in mind the war on drugs. The sale of illegal drugs is a "victimless" crime in the special but important sense that it is a consensual activity. Usually there is no complaining witness, so in order to bring the criminals to justice the police have to rely heavily on paid informants (often highly paid and often highly unsavory), undercover agents, wiretaps and other forms of electronic surveillance, elaborate sting operations, the infiltration of suspect organizations, random searches, the monitoring of airports and highways, the "profiling" of likely suspects on the basis of ethnic or racial identity or national origin, compulsory drug tests, and other intrusive methods that put pressure on civil liberties. The war on drugs has been a big flop; moreover, in light of what September 11 has taught us about the gravity of the terrorist threat to the United States, it becomes hard to take entirely seriously the threat to the nation that drug use is said to pose. Perhaps it is time to redirect law-enforcement resources from the investigation and apprehension of drug dealers to the investigation and apprehension of international terrorists. By doing so we may be able to minimize the net decrease in our civil liberties that the events of September 11 have made inevitable.

#### \*[Stone] Judges don’t know enough about threats and danger to decide that civil liberties come first – there should be deference to the military.

**Geoffrey Stone, Professor at the University of Chicago writes:** Stone, Geoffrey R. [Edward H. Levi Distinguished Service Professor at the University of Chicago, a Fellow of the American Academy of Arts and Sciences, and a Member of the American Philosophical Society, the American Law Institute, and the National Advisory Council of the American Civil Liberties Union] “National Security v. Civil Liberties.” *California Law Review.* 2007. RP

**How should judges approach deciding cases that involve the constitutionality of measures taken by the executive and legislative branches of government to protect the national security? As a matter of first principle, logic suggests that judges addressing such cases should start with a healthy dose of deference to military and executive officials.** This seems sensible for several reasons. **First, judges have relatively little experience with national security matters. Such cases arise infrequently, and judges are relative novices when it comes to assessing the possible implications of their decisions on national security. This cuts in favor of deference. Second, the stakes in such cases may be quite high. Unlike most legal disputes, in which erroneous judicial decisions have only modest consequences and are usually correctible, the potential consequences to the nation if a judge is wrong in a case involving the national security may be truly catastrophic**. Hence, a certain measure of deference seems wise. **Third, for institutional reasons, judges should be reluctant to second-guess the judgments of military and executive officials in such conflicts because if they err they may harm not only the national security but also the long-term credibility of the judiciary itself. Again, logic demands deference.** Not surprisingly, in light of these reflections, judges have traditionally followed this "logical" course when addressing conflicts between civil liberties and the national security. They have presumed-seemingly sensibly-that the actions of military and executive officials were constitutional whenever they acted in the name of national security. The three most dramatic twentieth- century clashes between civil liberties and the national security illustrate this approach.

#### 4. The opposite is true. Without national security mechanisms, the government is forced to over/underestimate threats without proper precautions. This forces the government to blindly swing at a pi**ñata, usually miss, and leave the nation vulnerable without any possible precautions for looming national threats.**